

No. 3154

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United States
Circuit Court of Appeals

For the Ninth Circuit.

UNION LAND AND STOCK COMPANY, a Cor-
poration,

Appellant,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

Upon Appeal from the Northern Division of the
United States District Court for the
Northern District of California,
Second Division.

FILED

AUG 7 - 1913

F. D. MONTGOMERY
CLERK

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

| | Page |
|---|------|
| Agreed Statement of the Case on Appeal..... | 3 |
| Answer | 7 |
| Assignment of Errors on Appeal..... | 15 |
| Certificate of Clerk U. S. District Court to Transcript of Record | 19 |
| Citation on Appeal | 21 |
| Final Decree | 1 |
| Motion of Defendant to Dismiss Action..... | 6 |
| Order Allowing Appeal and Fixing Amount of Bond | 14 |
| Petition for Appeal | 13 |
| Stipulation for Record on Appeal..... | 18 |
| Stipulation Re Articles of Incorporation of Union Land and Stock Co. | 11 |
| Stipulation Re Construction Work on Reservoir, etc. | 9 |
| Stipulation Re Statement of, Evidence, and for an Order Approving Same..... | 12 |

relief as prayed for in its complaint herein against the defendant; that all adverse claims of the defendant and all persons claiming, or to claim said grant to said lands covered by the easement and rights of way to said Union Land and Stock Company, set out and fully described in this bill of complaint, be declared forfeited and canceled and that the defendant, and all other persons claiming any right under the said grant be forever estopped from asserting any right, title or interest in said land, easement and rights of way, and that all title, rights and interest in said property described in said grant and this bill of complaint be reinvested in the plaintiff and said grant be declared null and void; that said reservoir site and right of way, known as Reservoir Number One, or Lake Lucket, is bounded and described as follows:

Located in Sections 15, 16, 21, 22 and 23, Township 36 North, Range 16 East, M. D. M., and more particularly described and delineated on map and plat that was filed and made a part of the bill of complaint and marked Exhibit "A" therein.

WM. C. VAN FLEET,

Judge of the United States District Court.

Dated October 31st, 1917.

Filed and entered November 1st, 1917.

WALTER B. MALING,

Clerk.

By Thomas J. Franklin,

Deputy Clerk. [2]

[On reverse side:] No. 22—Equity. United States of America vs. Union Land and Stock Com-

pany. Copy of Final Decree Dated October 31, 1917. Entered in Vol. 1, Equity Journal at page 8.

In the Northern Division of the United States District Court, for the Northern District of California, Second Division.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

UNION LAND AND STOCK COMPANY,
Defendant.

Agreed Statement of the Case on Appeal.

BE IT REMEMBERED: That on the 10th day of April, 1917, in the above-entitled cause, the plaintiff filed in the above court its Bill of Complaint, in the words and figures as follows:

(Title of Court and Cause.)

To the Honorable Judges of the District Court of the United States in and for the Northern District of California:

The United States of America, by Thomas W. Gregory, Attorney General, and John W. Preston, United States Attorney for the Northern District of California, bring this bill of complaint against the Union Land and Stock Company, a corporation organized and existing under the laws of the State of California, and having its principal place of business in the said State and District and for cause of action complain and show as follows:

I.

On November 18, 1895, and for a long time prior thereto, the plaintiff was the owner in fee simple as part of its public domain, of the following described lands in the Susanville, California, Land District, to wit: Sections 15, 16, 21, 22 and 23 of Township 36 North, Range 16 East, M. D. M. [3]

II.

On the 23d day of February, 1895, the defendant, under the provisions of the Act of Congress of March 3, 1891, Chapter 561, (26 Stat. 1101) entitled "An Act to Repeal Timber Culture Laws, and for other purposes," filed in the United States Land Office at Susanville, California, its application for an easement for a reservoir for irrigation purposes, under the provisions of Sections 18, 19, 20 and 21 of the above-entitled Act, in the form of a map or plat hereto attached and marked Exhibit "A" and made a part of this Bill of Complaint; that said easement for said reservoir was described upon said map or plat as Reservoir No. 1 or Lake Luckett, and covered and affected certain portions of lands located in Sections 15, 16, 21, 22 and 23, Township 36 North, Range 16 East, M. D. M., California, as shown thereon by said map or plat.

III.

That on said 18th day of November, 1895, the said application for an easement for a reservoir, described on said map or plat, was in accordance with the above-entitled act, duly approved by the Secretary of the Interior, subject to any valid rights existing on said date.

IV.

That no part of said reservoir or section thereof has been constructed or completed by said defendant, or its agents, since the approval of said right of way by the Secretary of the Interior;

WHEREFORE, plaintiff prays that the grant to said defendant to said easement covering and affecting said lands, set out and fully described in this Bill of Complaint, be declared forfeited and canceled, and that the defendant, Union Land and Stock Company, and all other persons claiming under it, be forever estopped from asserting any right, title or interest to said lands, and that all title, rights and interest to said property described [4] in said application, grant, and this Bill of Complaint, be reinvested in plaintiff, and said grant be declared null and void.

THOMAS W. GREGORY,

The Attorney General,

JNO. W. PRESTON,

United States Attorney,

ED. F. JARED,

Assistant United States Attorney,

Attorneys for Plaintiff.

(Here follows blue-print copy of map.)

[Endorsed]: Filed April 10, 1917. W. B. Maling, Clerk. By J. A. Schaertzer Deputy Clerk.

That the map attached to said Bill of Complaint, and referred to therein as Exhibit "A," called for a reservoir site covering approximately 469 acres,

with a dam at the outlet thereof 50 feet in height, a base width of 270 feet, a length on top of 230 feet and a length on the bottom of 80 feet, calculated to store, when completed, water over the entire acreage of said reservoir.

That a subpoena *ad respondendum*, directed to the defendant was regularly issued out of said Court in said cause on said 10th day of April, 1917, and was duly served on the defendant on the 18th day of April, 1917.

That thereafter, and on the 8th day of May, 1917, the defendant filed in said Court and cause, together with points and authorities in support thereof, a motion to dismiss said Bill of Complaint, which said motion was in the words and figures as follows:

(Title of Court and Cause.)

Motion of Defendant to Dismiss Action.

To the Honorable Judges of the District Court of the United States in and for the Northern District of California:

Now comes Union Land and Stock Company, defendant in the above-entitled action, by its attorneys, R. L. Shinn and A. L. Hart, and moves the Court for a judgment of said Court dismissing said action, and for defendant's costs herein. [5]

Said motion is made upon the grounds that the bill of complaint of plaintiff on file in said action does not state sufficient facts to constitute a valid cause of action in equity.

Said motion is based on said bill of complaint and on all papers, records and files in said action.

R. L. SHINN,

A. L. HART,

Attorneys for Defendant.

That thereafter, and on the 28th day of May, 1917, said motion came on regularly to be heard in said Court, sitting at San Francisco, California was duly argued by counsel for the respective parties and submitted to the Court for its decision, and thereafter was by the Court denied.

That on the 7th day of June, 1917, the defendant duly served on the attorneys for the plaintiff and filed in said court its answer to said bill of complaint, which said answer was in the words and figures as follows:

(Title of Court and Cause.)

Answer.

To the Honorable Judges of the District Court of the United States, in and for the Northern District of California:

Comes now Union Land and Stock Company, the defendant in the above-entitled action, and for answer to the bill of complaint of the plaintiff herein, admits, denies and avers as follows:

I.

Answering Count 1 of said bill of complaint, this defendant denies that on November 18, 1895, or for a long time prior thereto, plaintiff was the owner in fee simple or otherwise, as part of its public do-

main, of the whole of those certain lands in Susanville, California, Land District, described as Sections 15, 16, 21, 22 and 23 of Township 36 North, Range 16 East, M. D. M., and in this connection defendant avers the fact to be that on [6] said 18th day of November, 1895, and for a long time prior thereto, this defendant was and had been and that it now is the owner of the following portion of said lands, in fee simple, to wit: The Southeast quarter of said Section 15, and the West half of the Northeast quarter of said Section 22, Township and Range aforesaid.

II.

Defendant admits all the averments contained in Counts II and III of said bill of complaint.

III.

Answering Count IV of said bill of complaint, defendant denies that no part of said Reservoir No. 1 or Lake Luckett has been constructed or completed by this defendant or its agents since the approval of said right of way by said Secretary of the Interior and in this connection defendant avers the fact to be that prior to the expiration of five years after the date of said approval defendant constructed and completed the dam called for and contemplated by its said application to a height of 32 feet, a width on the bottom of 250 feet and a length on top from bank to bank of 250 feet, with all necessary pipes and gates for the storage of waters in said reservoir. That the last of said work was done by defendant in September, October and November of the year 1898, and that said reservoir, ever since said last

named date has been and now is being maintained and used for the storage of water to approximately the capacity above set forth; that in each and every year since said year 1898, water has been stored in said reservoir during the flood season to its full capacity whenever said flood waters were sufficient for said purpose and said water has been used during the irrigation season for the irrigation of lands lying below said reservoir.

IV.

Further answering said bill of complaint, and as a further [7] separate and additional defense thereto defendant avers that plaintiff has never demanded of defendant that it relinquish its claims or rights to the portion or section of said reservoir which has not been completed.

WHEREFORE defendant prays that plaintiff take nothing by its said bill of complaint, that said action be dismissed and that defendant have its costs herein expended.

R. L. SHINN,

A. L. HART,

Attorneys for Defendant.

LAWRENCE L. LEVY,

Of Counsel.

That said answer was duly verified by the oath of J. Carroll, the Secretary of said defendant.

That thereafter, and on the 5th day of October, 1917, said cause came on regularly for trial before said Court, sitting at Sacramento, California, and that at said trial the following evidence was introduced and proceedings had, to wit:

Stipulation Re Construction Work on Reservoir, etc.

It was stipulated in open court by counsel for the respective parties that the following construction work had been done on the reservoir involved in this action and described in the said bill of complaint, and none other, to wit:

That in the years 1894 and 1895, the Union Land and Stock Company, defendant herein, went on the ground at the point indicated on said map attached to said bill of complaint as Exhibit "A," and constructed a dam which at that time was 35 feet high; that this construction was finished some time in 1895, after the month of November; that said dam remained at that height until the winter of 1897-1898, when a portion of it was washed away; that in the fall of 1898 said dam was reconstructed to a height of 26 feet, but settled down to a height at its lowest point of 23 feet, at which point it remained and now remains; that said dam has 300 feet of 30-inch steel pipe through the bottom, with a patent gate in shape to store and withdraw water. [8]

It was also shown by competent evidence that the dam as constructed would not store water over more than 100 acres of the land in said reservoir, and that it did not have a capacity of more than 600 acre-feet of water; that the dam was in a bad state of repair, but that it was strong enough to store water in the reservoir to a depth of 20 feet; that the base was not of sufficient width to build the dam to a height of 50 feet; that the said reservoir is one of a series of reservoirs, the others being known as dams Nos. 2 and 3, and that they are all used in connection with

each other; that reservoir No. 1, being the one in suit, has been mainly used for the irrigation of what is known as the "Moulton Ranch," under a verbal agreement with the owners of said ranch; that the defendant company had been properly notified and cited to relinquish said reservoir site or show cause why judicial proceedings should not be instituted to cancel the grant, for the reason that the dam had not been built in accordance with the application as shown on Exhibit "A," attached to the complaint; that the defendant had had 20 years in which to complete said dam in accordance with said plans; that said reservoir has been used to store water each year since its construction, with the exception of dry years when there was no water to store.

Stipulation Re Articles of Incorporation of Union Land and Stock Co.

It was further stipulated that the articles of incorporation of Union Land and Stock Company, defendant herein, together with due proofs of its organization, were filed in the office of the Secretary of the Interior, through the United States Land Office, in connection with its maps and plans, not later than February, 1895, and that on February 23, 1895, the map marked Exhibit "A" was filed in the local Land Office at Susanville, Cal., which map was approved by the Secretary of the Interior on November 18, 1895. The above and foregoing was all the evidence introduced at the trial of said cause. [9]

**Stipulation Re Statement of Evidence, and for an
Order Approving Same.**

It is hereby stipulated and agreed that the above and foregoing is a correct statement of the case in the above cause, and that it shows how all questions involved in said cause arose and were decided by the Court, and that it contains all the facts alleged and proved that are essential to a decision of such questions by the Circuit Court of Appeals of the United States for the Ninth Judicial Circuit.

Dated April 30th, 1918.

R. L. SHINN,

A. L. HART,

Attorneys for Defendant and Appellant.

JNO. W PRESTON,

ED. F. JARED,

Attorneys for Plaintiff and Respondent

Approved and allowed as a stipulated statement of the case on appeal, and certified to be correct, this 1st day of May, 1918.

WM. C. VAN FLEET,

District Judge. [10]

[Endorsed]: In Equity—No. 22. In the Northern Division of the District Court of the United States for the Northern District of California, Second Division. United States of America, Plaintiff, vs. Union Land and Stock Company, Defendant. Agreed Statement of the Case on Appeal. Filed May 10, 1918 Walter B. Maling, Clerk. By Thomas J. Franklin, Deputy Clerk. [11]

*In the Northern Division of the United States
District Court, for the Northern District of
California, Second Division.*

IN EQUITY—No. 22.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

UNION LAND AND STOCK COMPANY,

Defendant.

Petition for Appeal.

Filed April —, 1918, in the Above-entitled District
Court, Sacramento.

To the Hon. WILLIAM C. VAN FLEET, District
Judge of the Above-entitled District Court:

The above-named defendant, feeling itself ag-
grieved by the decree entered in the above cause in
said court on November 1, 1917, does hereby appeal
from said decree to the Circuit Court of Appeals for
the Ninth Judicial Circuit, for the reasons specified
in the assignment of errors which is filed herewith,
and it prays that its appeal be allowed and that cita-
tion issue as provided by law, and that a transcript
of the record, proceedings and papers upon which
decree was based, duly authenticated, may be sent
to the United States Circuit Court of Appeals for
the Ninth Judicial Circuit, sitting at San Francisco,
California.

And your petitioner further prays that the proper
order be made touching the security to be required
of it to perfect its appeal.

Dated April 16th, 1918.

R. L. SHINN,
A. L. HART,
Attorneys for Defendant.

It is ordered that the appeal be allowed as prayed for upon defendant giving a bond in the sum of \$———.

_____,
District Judge.

[Endorsed]: In Equity. No. 22. In the Northern Division of the District Court of the United States for the Northern District of California. Second Division. United States of America, Plaintiff, vs. Union Land and Stock Company, Defendant. Petition for Appeal. Filed Apr. 16, 1918. Walter B. Maling, Clerk. By Thomas J. Franklin, Deputy Clerk. [12]

*In the Northern Division of the United States
District Court, for the Northern District of
California, Second Division.*

No. 22—EQUITY.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

UNION LAND AND STOCK COMPANY,
Defendant.

Order Allowing Appeal and Fixing Amount of Bond.
Upon considering the petition of defendant on

file herein for appeal from the decree entered in the above cause in said Court on November 1, 1917, to the Circuit Court of Appeals for the Ninth Judicial Circuit,

IT IS ORDERED that said appeal be allowed as prayed for, upon defendants giving a bond in the sum of three (\$300) hundred (\$300) dollars.

Dated April 18th, 1918.

WM. C. VAN FLEET,
Judge.

Entered this 18th day of April, A. D. 1918.

WALTER B. MALING,
Clerk.

By Thomas J. Franklin,
Deputy Clerk. [13]

Entered in Vol. 1, Order Book in Equity, at page 18.

*In the Northern Division of the United States
District Court, for the Northern District of
California, Second Division.*

IN EQUITY—No. 22.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

UNION LAND AND STOCK COMPANY,
Defendant.

Assignment of Errors on Appeal.

And now, on this 16th day of April, 1918, comes the defendant above named, by its attor-

neys, R. L. Shinn and A. L. Hart, and says that the decree entered in the above cause on the 1st day of November, 1917, is erroneous and unjust to this defendant:

1st. Because the Court erred in refusing to direct a dismissal of the bill of complaint in said action, for the reason that the said bill of complaint does not state facts sufficient to constitute a valid cause of action in equity.

2d. Because there is no authority in law for the prosecution of this action by the United States Attorney General.

3d. Because the Court erred in holding all of the rights of said defendant in the reservoir site involved in said action for cancellation, for the following reasons:

a. There is no law authorizing the cancellation of said reservoir rights, except to the extent that said reservoir has not been completed, and the undisputed evidence in said cause shows that said reservoir has been completed by the defendant to the height of 23 feet, and the law gives the defendant an indefeasable right to said reservoir to said height of 23 feet.

b. It appears as an undisputed fact that in the years 1894 and 1895 the defendant constructed a dam at said reservoir site to a height of 23 feet and used the same for the storage of [14] water for irrigation, and has ever since maintained and used the same; that not later than the month of February, 1895, said defendant filed in the office of the Secretary of the Interior for the United States of Amer-

ica its articles of incorporation and due proofs of its organization; that by reason of the foregoing said defendant's rights to the right of way for said reservoir became vested to the extent of said construction, and said Court had no power to forfeit the rights of said defendant in or to said reservoir as constructed.

c. The said decree purports to forfeit the rights of said defendant not only to said reservoir site, but also as to all of the lands embraced within the limits thereof, while it appears as an undisputed fact that the defendant holds by fee simple title the following lands within the limits of said reservoir, independent of said right of way: The Southeast quarter of Section 15, and the West half of the Northeast quarter of Section 22, Township 36 North, Range 16 East, M. D. M., and containing 240 acres of land.

WHEREFORE defendant prays:

First: That the said decree be reversed, and the District Court directed to dismiss the bill of complaint in said cause.

Second: In the event that the Circuit Court of Appeals should determine that said bill of complaint should not be dismissed, that it direct the said District Court to so modify its said decree that the forfeiture be limited to that portion of the right of way for said reservoir site that has not been completed. and that said defendants rights to said reservoir to the extent that the same has been constructed be made absolute.

R. L. SHINN,

A. L. HART,

Attorneys for Defendant. [15]

[Endorsed]: In Equity.—No. 22. In the Northern Division of the United States District Court for the Northern District of California, Second Division. The United States of America, Plaintiff, vs. Union Land and Stock Company, Defendant. Assignment of Errors on Appeal. Filed Apr. 16, 1918. Walter B. Maling, Clerk. By Thomas J. Franklin, Deputy Clerk. [16]

*In the Northern Division of the United States
District Court, in and for the Northern District
of California, Second Division.*

No. 22—EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

UNION LAND AND STOCK COMPANY,

Defendant.

Stipulation for Record on Appeal.

It is hereby stipulated that the record on appeal in the above-entitled suit shall consist of the following papers:

1. Final decree;
2. Statement on appeal;
3. Petition for appeal;
4. Order allowing appeal;
5. Assignment of errors;

6. This stipulation.

JNO. W. PRESTON,
U. S. Attorney.

ED. F. JARED,
Asst. U. S. Attorney.

R. L. SHINN,
A. L. HART,

Attorneys for Defendant.

[Endorsed]: Filed May 14, 1918. Walter B. Maling, Clerk. By Thomas J. Franklin, Deputy Clerk. [17]

*In the Northern Division of the United States
District Court, in and for the Northern District
of California, Second Division.*

No. 22—EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

UNION LAND AND STOCK COMPANY,

Defendant.

**Certificate of Clerk U. S. District Court to Transcript
of Record.**

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing 17 pages, numbered from 1 to 17, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the stipulation for transcript of record, as the same remain on file and of

record in the above-entitled cause, and that the same constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$6.35; that said amount was paid by Union Land and Stock Company; and that the original citation issued herein is hereunto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 16th day of May, A. D. 1918.

[Seal]

WALTER B. MALING,
Clerk United States District Court.

By Thomas J. Franklin,
Deputy Clerk. [18]

State of California,
County of Sacramento,—ss.

R. L. Shinn, being first duly sworn, deposes and says that he is and at all the times herein mentioned was a citizen of the United States, over the age of twenty-one years, and one of the attorneys for Union Land and Stock Company, defendant in the within entitled action. That Ed. F. Jared, Assistant United States Attorney, is one of the attorneys of record for United States of America, the plaintiff in said action. That affiant resides and has his office at Sacramento, California; that said Ed. F. Jared resides and has his office at San Francisco, California; that in each of said places there is a United States Postoffice, and between them regular commu-

nication by United States mail; that on the 3d day of May, 1918, affiant served the hereunto annexed Citation on Appeal on Ed. F. Jared, the said attorney for said plaintiff, by depositing a full, true and correct copy of the same in the United States Post-office at Sacramento, California, enclosed in an envelope addressed to said Ed. F. Jared, Assistant United States Attorney, at San Francisco, California, with said envelope securely sealed and the postage thereon fully prepaid.

R. L. SHINN.

Subscribed and sworn to before me this 4th day of May, 1918.

[Seal]

FRED J. HARRIS,

Notary Public in and for Sacramento County, State of California. [19]

In the Northern Division of the United States District Court, for the Northern District of California, Second Division.

IN EQUITY—No. 22.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

UNION LAND AND STOCK COMPANY,

Defendant.

Citation on Appeal.

United States of America, to the Plaintiff in the Above-entitled Action, GREETING:

You are hereby notified that in a certain case in

equity in the United States District Court of the Northern Division, Northern District of California, Second Division, wherein United States of America is complainant and Union Land and Stock Company is defendant, an appeal has been allowed to the defendant therein to the Circuit Court of Appeals for the Ninth Circuit. You are hereby cited and admonished to be and appear in said Court at San Francisco, California, 30 days after the date of this citation, to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS the Hon. W. C. VAN FLEET, Judge of the United States District Court for the Northern District of California, this the 18th day of April, 1918.

WM. C. VAN FLEET,
District Judge. [20]

[Endorsed]: In Equity. No. 22. In the Northern Division of the United States District Court for the Northern District of California, Second Division. The United States of America, Plaintiff, vs. Union Land and Stock Company, Defendant. Citation on Appeal. Filed. May 10, 1918. Walter B. Maling, Clerk. By Thomas J. Franklin, Deputy Clerk.

[Endorsed]: No. 3154. United States Circuit Court of Appeals for the Ninth Circuit. Union Land and Stock Company, a Corporation, Appellant,

vs. The United States of America, Appellee. Transcript of the Record. Upon Appeal from the Northern Division of the United States District Court for the Northern District of California, Second Division.

Filed May 17, 1918.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

